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ABSTRACT

This booklet addresses the provisions of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 that impact on responsibilities and rights of postsecondary students with disabilities. The booklet discusses eligibility to receive academic adjustments, procedures for acquiring academic adjustments, grievance procedures in cases of disagreement with academic adjustments, the issue of confidentiality, "special privileges," eligibility for a course substitution or waiver, payment for academic adjustments, rights of international students, and strategies for self-advocacy. The booklet concludes with a list of six national resource organizations and three Missouri resource organizations. (JDD)

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RIGHTS AND RESPONSIBILITIES OF STUDENTS WITH DISABILITIES IN THE COLLEGE AND UNIVERSITY

Introduction

This handbook was designed to assist students with disabilities in the postsecondary academic setting. This handbook addresses legislation and the responsibilities and rights of students.

This handbook provides general information to assist students with disabilities. Any opinions or interpretation in the document are those of the author and do not necessarily reflect the views of the enforcing agencies.

This document is intended to assist postsecondary students with disabilities in understanding and implementing the requirements of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act. While every effort has been made to insure completeness and accuracy, this is not a legal document nor does it purport to offer legal advice or a legal opinion.

Legislation

*** WHAT LEGISLATION COVERS HIGHER EDUCATION INSTITUTIONS?

Colleges and universities are both covered under the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) of 1990. The Rehabilitation Act of 1973 is discussed first.

The Rehabilitation Act

Title V of The Rehabilitation Act of 1973 is generally

regarded as the first civil rights legislation for people with disabilities on the national level.

Section 504 of the Act is a program access statute. It prohibits discrimination on the basis of disability in any program or activity offered by an entity or institution receiving federal funds. Since 1977, all institutions receiving federal funding must be prepared to provide appropriate academic adjustments and reasonable modifications to policies and practices for people with disabilities.

Section 504 states (as amended):

> "No otherwise qualified person with a disability in the United States . . . shall, solely on the basis of disability, be denied access to, or the benefits of, or be subjected to discrimination under any program or activity provided by any institution receiving federal financial assistance."

Section 504 Coordinator

Under Section 504, institutions were required to appoint and maintain at least one person to coordinate its efforts to comply with the requirements of Section 504 (Section 504 Coordinator). This individual or office has the ongoing responsibility of assuring that the institution/agency/ organization practices nondiscrimination on the basis of disability and should be included in any grievance procedures developed to address possible instances of discrimination brought against the institution.

The Americans with Disabilities Act (ADA)

The ADA is a federal civil rights statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same opportunities that are available to persons without disabilities.

Universities are covered in many ways under the ADA. Employment is addressed by Title I, accessibility provided by public and private entities Titles II and III, and miscellaneous items are covered under Title V.

***** HOW DOES ADA RELATE TO SECTION 504?**

Institutions that receive federal funds are covered under Section 504. The ADA does not supplant Section 504, but in those situations where the ADA provides greater protection, the ADA standards apply.

We will focus on Section 504 of the Rehabilitation Act of 1973 and address Titles II and III of the ADA.

REMEMBER: Private colleges and universities are covered under Title III of the ADA, unless they are wholly owned and operated by religious organizations.

***** WHAT IS THE DEFINITION OF AUXILIARY AIDS AND SERVICES UNDER THE LEGISLATION?**

Under Section 504 and the ADA, the terms "auxiliary aids and services" include: qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, qualified readers, taped text, Braille materials, acquisition or modification of equipment or devices, or other similar services and actions.

In postsecondary education, classroom accommodations are referred to as "appropriate academic adjustments."

***** HOW DO I KNOW IF I AM ELIGIBLE TO RECEIVE ACADEMIC ADJUSTMENTS?**

A person is eligible for services if they are considered a person with a disability, have identified themselves to the institution, have presented documentation regarding the disability to the institution, and need academic adjustments.

Section 504 defines a person with a disability as follows:

A person is considered to be a person with a disability if he/she is someone with a physical or mental impairment that substantially limits one or more major life activities, has a record of the disability, or is regarded as having the disability.

***** WHAT MUST I DO TO RECEIVE ACADEMIC ADJUSTMENTS?**

Colleges differ from high schools regarding the first step of providing academic adjustments. When a person with a disability needs an academic adjustment in high school, a team of people is assigned to that student to discuss classroom instructional accommodations. This is not the case with colleges and universities. The legislation states that to receive services from the university, a person with a disability must first disclose their disability to the institution. In most cases, the person would disclose this to the Disabled Student Services (DSS) Coordinator on campus. (Each institution refers to this office differently. For the purpose of this handbook, it will be referred to as Disabled Student Services). The DSS Coordinator will ask you to bring in documentation regarding your disability, then will assist you in receiving the needed services. Each

campus has its own procedures for this process, so it is important to communicate with that office.

Begin this communication process early because most institutions require advance notice to provide requested academic adjustments. Most institutions want 1-2 months advance notice. When communicating with faculty or the DSS office, be well versed on your needs and rights. For many students, this may be the first time you will be requesting accommodations for yourself, so remember to practice with friends or in front of a mirror. Effective self-advocacy, like all skills, takes practice.

***** WHAT HAPPENS IF I DISAGREE WITH THE ACADEMIC ADJUSTMENTS PRESENTED TO ME?**

If you disagree with the academic adjustment being presented to you speak with your DSS Coordinator. Express your concerns and be prepared to offer alternative solutions. If that does not alleviate the situation, find out what your university policy is regarding grievance procedures and proceed from there. The university has to provide "appropriate academic adjustments", but if the institution can provide you with an auxiliary aid that is equally as effective as the one being requested and less expensive, the university is not required to buy the more expensive one. Example: The institution does not have to buy the biggest and best computer and printer if a system is already available which would be just as effective.

If the issue cannot be resolved at the university level, contact the Office of Civil Rights or the Department of Justice. File complaints under Section 504 of the Rehabilitation Act with the Office of Civil Rights of the U.S. Department of Education (OCR), or those under Titles II or III of the ADA with the Department of Justice. If unsure, file

with the Department of Justice, who will refer the complaint to the appropriate agency. Keep in mind that documentation is imperative. Make specific notes about any suspect situations by listing dates, names, and a description of the alleged discrimination.

A complaint must be filed within 180 days of the date of the alleged act(s) of discrimination, unless the time for filing is extended by the Federal Agency.

The legislation details how the academic adjustment provided must be effective.

***** DOES THE INSTITUTION HAVE THE RIGHT TO DISCLOSE MY DISABILITY TO OTHERS?**

Section 504 states that any information regarding a person's disability gained from medical examinations or the appropriate post-admissions investigation shall be considered confidential and shall be shared with others within the college or university on a need-to-know basis. In other words, faculty members do not need to have access to information regarding a student's disability, only the needed accommodations which are appropriate and necessary to the meet the student's needs. Confidential information should be kept in a separate file which has limited access to maintain confidentiality. In most cases this is the DSS office.

***** CAN I EXPECT "SPECIAL PRIVILEGES" FROM THE PROFESSOR?**

No. Receiving an academic adjustment should not be regarded as giving you, the student, "special privileges", but rather as minimizing the impact of the disability to the

greatest extent possible. It is important to remember that the professor expects the same academic performance from you as the other students. The legislation does not intend that institutions pass students because they have a disability and they feel sorry for them. It is important that you be treated the same and be allowed to fail. This is important in your educational experience and may give you, the student, an opportunity to learn from the experience. You must adhere to the same codes of conduct required by the institution.

Institutions are not required to make changes in requirements if it can be shown that the change would require a major or substantial change in an essential element of the curriculum. The institution has the right to set academic standards, but the institution must prove that a requested change would create a substantial change. The burden of proof lies with the institution.

***** AM I ELIGIBLE FOR A SUBSTITUTION OR WAIVER FROM THE INSTITUTION?**

A substitution is not an appropriate modification if the course or content is found to be an essential to the area of study and making a substitution would require a "substantial change in an essential element of the curriculum." It is the institution's responsibility to show that a certain class or area is essential to a certain course of study and if there were any changes in the curriculum, it would substantially alter the curriculum. This should be decided on a case-by-case basis.

Course waiver is very rare. It is a possibility, but is often seen as watering down the curriculum. Waivers are not seen as the accommodations of choice, but if all other accommodations attempted have proved to be ineffective it

would be punitive to ask the student to continue to try the ineffective accommodation.

Responsibilities

***** DO I HAVE TO IDENTIFY MYSELF TO THE INSTITUTION TO RECEIVE ACADEMIC ADJUSTMENTS?**

Yes. You have to identify yourself to the institution and provide documentation regarding your disability to the appropriate person. In most cases, this is the DSS officer.

***** WHO DECIDES WHAT TYPE OF ACADEMIC ADJUSTMENTS I WILL RECEIVE?**

You are the best resource when determining needed accommodations. It is important that you know what type of academic adjustment works best for you. This is done in cooperation with the DSS office. Remember, the same accommodation for each class may not be needed. For example, a science class may require a different accommodation than a writing class. Tests may also differ between classes. You may request an academic adjustment, but the institution is not required to provide the specific accommodation requested. The institution must, however, provide an "effective" academic adjustment. Your documentation must specifically support the needs for any accommodations requested.

***** AM I RESPONSIBLE FOR PAYING FOR THE ACADEMIC ADJUSTMENTS?**

No. Each institution is responsible for the provision of the appropriate auxiliary aids and services available at no cost to the student. Each institution may determine which

department pays for a particular accommodation. The institution cannot place a limit on its expenditure for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist. The institution may work with an outside agency, such as Vocational Rehabilitation (VR) to assist in obtaining reimbursement for the cost of the item or service.

It is your responsibility to notify the DSS if any class changes occur during the semester. This will allow the DSS officer the opportunity to provide the academic adjustments necessary. If you utilize services specifically contracted by the DSS office for your academic adjustments (interpreter or notetakers) it is your responsibility to contact the DSS office prior to classes you are unable to attend. This allows the DSS office to cancel those services.

***** THE UNIVERSITY IS PROVIDING TRANSPORTATION FOR A FIELD TRIP, BUT IT IS INACCESSIBLE TO ME BECAUSE I USE A WHEELCHAIR. DO I HAVE TO PAY FOR MY OWN TRANSPORTATION?**

No. If the field trip is a university sponsored program, accommodations must be offered, such as accessible transportation. You, the student, may accept or refuse the accessible transportation. Legislation states that the institution should provide equal access to programs, services, facilities, and extracurricular programs.

***** DO I HAVE THE RIGHT TO ACADEMIC ADJUSTMENTS IF I AM AN INTERNATIONAL STUDENT WITH A DISABILITY?**

Yes. International students are entitled to the same protection from nondiscrimination on the basis of disability

as are U.S. citizens. Section 504 states the prohibition of discrimination covers any "otherwise qualified person with a disability in the United States." Section 504 does not state the student has to be a citizen of the United States.

***** AM I STILL ELIGIBLE FOR ACADEMIC ADJUSTMENTS IF I AM TAKING THE CLASS FOR AN AUDIT?**

Yes. The legislation states any student with a disability is eligible for services if the institution receives federal assistance.

***** IS THE INSTITUTION RESPONSIBLE FOR PAYING FOR MY PERSONAL SERVICES SUCH AS PERSONAL CARE ATTENDANT (PCA)?**

No. The legislation indicates institutions are not responsible to provide PCAs, readers for personal use or study, or other devices or services of a personal nature.

***** WHAT ARE SOME STRATEGIES TO ADVOCATE FOR MYSELF IN THIS PROCESS?**

The first step is to know yourself, including your strengths, weaknesses, and what type of accommodation is needed. Have a goal and a plan of action to obtain that goal. Obtain assistance from a mentor or other person who could be used as a resource person. The mentor could be a professor, an older student with a disability who has been through the process, or a service provider such as the DSS Coordinator. Learn what resources are available on campus in your region, and nationally.

*** WHAT RESOURCES ARE AVAILABLE TO ASSIST ME?

Below is a list of possible resources:

National Resources

Office on the ADA
Civil Rights Division
P.O. Box 66118
U.S. Department of Justice
Washington, DC 20035-6118
(202) 514-0301 (V)
(202)514-0381 (TDD)

Equal Employment Opportunity Commission
1801 L Street, NW
Washington, DC 20507
(202) 663-4900 (V)
(800) 800-3302 (TDD)

Architectural & Transportation Barriers Compliance Board
1111 18th Street NW
Ste. 501
Washington, DC 20036
(800) USA-ABLE (V/TDD)

Federal Communications Commission (FCC)
1919 M Street NW
Washington, DC 20554
(202) 632-7260 (V)
(202) 632-6999(TDD)

Department of Transportation
400 Seventh Street NW
Washington, DC 20590
(202) 366-9305 (V)
(202) 755-7687 (TDD)

Job Accommodation Network
(JAN)
(800) 526-7234

Regional Resources

Missouri Assistive Technology Project
4731 South Cochise
Ste. 114
Independence, MO 64055-6975
(800) 647-8557 (V)
(800) 647-8558 (TDD)

The ADA Project
4816 Santana Circle
Columbia, MO 65203
(314) 882-3600 (V/TDD)
(800) 949-4232 (V/TDD)

Governor's Council on Disability
3315 W. Truman Boulevard
Jefferson City, MO 65109
(314) 751-2600 (V/TDD)
(800) 877-8249 (V/TDD)

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